

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 85-0489-RGS

UNITED STATES OF AMERICA,
Plaintiff,

v.

METROPOLITAN DISTRICT COMMISSION, et al.,
Defendants.

CIVIL ACTION NO. 83-1614-RGS

CONSERVATION LAW FOUNDATION OF NEW ENGLAND, INC.,
Plaintiff,

v.

METROPOLITAN DISTRICT COMMISSION,
Defendant.

SCHEDULE SEVEN COMPLIANCE ORDER NUMBER 228

July 8, 2013

STEARNS, D.J.

This is the two hundred and twenty-eighth Compliance Order that has issued in this litigation. On June 14, 2013, the Massachusetts Water Resources Authority (MWRA) filed its Quarterly Compliance and Progress Report. The United States has indicated that it declines to file a response.

I. Schedule Seven

A. Activities Completed

1. CAM004 Stormwater Outfall and Detention Basin

The MWRA reports that on April 25, 2013, the City of Cambridge completed the building of the combined sewer overflow (CSO)-related elements of the CAM004 stormwater outfall and detention basin project. This project included the construction of a culvert storm drain funneling separated stormwater to a new 3.4 acre wetland in a formerly desolate area of the Alewife Brook Reservation. The wetland basin, which has 10.3 acre-feet of storage capacity, will regulate the rate of stormwater discharge into the Little River and Alewife Brook without causing any increase in flood levels. In addition, natural treatment processes in the constructed wetland system will remove pollutants from urban stormwater run-off.

The basin's design includes the planting of 125,000 herbaceous plugs of native species, of which 6,000 were installed in the deep marsh zones in early April. These are intended to enhance plant and wildlife habitat, as well as to provide natural flood control measures and recreational and educational opportunities. Flows will be diverted to the basin once the CAM004 sewer separation contracts are finished. In the meantime, the temporary bulkheads that have been installed in parts of the upstream conduit system will continue to direct stormwater flows to the CAM004 outfall.

Under the terms of a Memorandum of Agreement between the City of Cambridge and the Department of Conservation and Recreation (DCR), Cambridge is responsible for maintaining the main wetland basin and forebay (including the vegetated swale separating the two), the open oxbow, and the City-owned utilities on the property, while DCR is responsible for managing and maintaining the recreational and educational amenities, which include pedestrian pathways and trails, boardwalks, informational signage, benches, a Greek amphitheater, and landscaping. Cambridge's contractor is

currently restoring graded surfaces, including a portion of the new bike path that winds from Alewife Station to the Town of Belmont.

With the completion of the CAM004 stormwater outfall and detention basin project, along with the completion of the Brookline sewer separation project (ahead of the Schedule Seven milestone, and discussed below), the MWRA has completed 31 of the 35 projects that make up the long-term CSO control plan.

2. Annual CSO Report

As noted in the court's last Order, the MWRA submitted its 2012 annual CSO report in March of 2013, in compliance with Schedule Seven.

II. Progress Report

1. CSO Program

a. Brookline Sewer Separation

The MWRA reports that on April 26, 2013, the Town of Brookline marked the completion its \$24.9 million sewer separation project, well ahead of Schedule Seven's July 2013 milestone. According to the MWRA, all CSO-related elements of the project are complete and functioning as intended with all of the anticipated environmental benefits. This project, for which the Notice to Proceed for design was issued in 2006, involved separating the combined sewer systems serving a 71-acre area of Brookline. The project included the installation of over 10,000 linear feet of storm drain and over 6,000 linear feet of sanitary sewer, as well as the removal of heavy sediments from outfall MWR010. With the completion of the project, Brookline has removed large volumes of stormwater loads from the local and MWRA sewer systems, with the separated stormwater now draining directly into the Charles River Basin through outfall

MWR010. The benefits include removing the burden of stormwater flows on sewage transport systems and reducing flows to the MWRA's Ward Street Headworks. It is also expected that CSO discharges to the Charles River at outfall MWR010, the Cottage Farm CSO treatment facilities, and possibly other Charles River CSO outfalls and Prison Point (all contributing overflow to the Inner Harbor) will be significantly reduced.

b. Reserved Channel Sewer Separation

According to the MWRA, the Boston Water and Sewer Commission (BWSC) continues to make design and construction progress on the remaining contracts that comprise the Reserved Channel sewer separation project. The two remaining sewer separation contracts – the \$10.8 million Contract 3B (which involves sewer separation over a span of 66 acres, and is now 60 percent complete) and the \$9.1 million Contract 4 (which involves sewer separation over 182 acres, and is now 40 percent complete), are progressing on schedule. Contract 3B is expected to be completed in October of 2014, and Contract 4 is expected to be completed in August of 2015.

The MWRA additionally reports that the \$6.8 million Contract 8 (for pavement restoration) is now 30 percent complete; that BWSC is progressing with the design for Contract 5 (for cleaning and lining of existing sewers); and that Contract 6 (for downspout disconnections) has been re-advertised after BWSC rejected all initial bids in March of 2013. According to the MWRA, all work remains on track for completion by December of 2015, in compliance with Schedule Seven.

c. CAM004 Sewer Separation

The MWRA reports – with a cautionary note – that the City of Cambridge continues to make progress on its three construction projects, with the intent of meeting

the December 2015 milestone. The MWRA's warning flag notes that the schedule may be adversely affected by bidding anomalies, utility conflicts, restrictions at soil landfills,¹ and severe weather events. According to the MWRA, Cambridge is closely monitoring these risks, and is working with its engineer to mitigate scheduling impacts to the extent practicable.

The MWRA reports that Cambridge is making progress with the \$17 million Contract 8A, and that the contractor has continued over the last quarter to install sanitary sewer and storm drain pipe in the Huron Avenue-Fresh Pond-Brattle Street vicinity. The sewer separation work is scheduled to be completed in May of 2014, with the completion of surface restoration work to follow in December of 2014.

Cambridge has additionally completed the design of the \$28.9 million Contract 8B, which involves the separation of combined sewers in an 83-acre area between Concord Avenue and Brattle Street. Contract 8B includes the installation of new sanitary sewers and storm drains in Huron Avenue (and several intersecting streets). According to the MWRA, Cambridge plans to proceed with construction this month.

The MWRA further reports that Cambridge has completed approximately 50 percent of the design of Contract 9, which includes the installation of new sanitary sewers and storm drains in Concord Avenue (and intersecting streets) in order to separate combined sewers in a 60-acre area from Fresh Pond Parkway to the intersection of Concord and Huron Avenues. The MWRA reports that Cambridge plans to begin construction in January of 2014, with substantial completion slated for December of 2015, in Compliance with Schedule Seven.

¹ According to the MWRA, soil disposal is an issue as a result of restrictions imposed by the Commonwealth on facilities located in Massachusetts.

With respect to the increased cost estimates (from \$60 million to \$87.1 million) noted in the court's last Order, the MWRA reports that its additional award of \$17.3 million in March allowed Cambridge to advertise Contract 8B for construction bids without any delay. The MWRA also reports that it has included an additional \$10 million in its Fiscal Year 2014 Capital Improvement Program (CIP) budget submission, which is contingent on the approval of the MWRA's Board of Directors. This additional \$10 million would cover the MWRA's eligible costs related to Contract 9, and was placed on the MWRA Board's agenda on June 26, 2013.

d. Control Gate and Floatables Control at Outfall MWR003 and
MWRA Rindge Avenue Siphon Relief and Interceptor Connection
Relief and Floatables Control at Outfall SOM01A

The MWRA reports that it continues to make progress with these two projects, which are the last two of the six projects that comprise the Alewife Brook CSO plan. The SOM01A project involves an upgrade to the hydraulic capacity of the connection between the Tannery Brook Conduit and the Alewife Brook Conduit, which will result in the reduction of discharges from the Tannery Brook Conduit at Outfall SOM01A, and provide floatables control. The MWRA reports that it presented its construction plans for the SOM01A project at a hearing before the Cambridge Conservation on April 8, 2013, and that the Commission determined that the work is not subject to the Wetlands Protection Act's permit requirements. In addition, DCR issued a permit for the SOM01A-related work in the Alewife Brook Reservation and Alewife Brook Parkway. The MWRA expects to issue the Notice to Proceed in September of 2013, in compliance with Schedule Seven.

The MWR003/Rindge Avenue siphon project is intended to upgrade the overflow hydraulic capacity at Outfall MWR003 for extreme storms, in part to compensate for the loss associated with the planned closing of Outfall CAM004. In addition, the project will increase the hydraulic capacity at the Rindge Avenue siphon, which delivers overflows to Outfall MWR003. An automated gate providing a higher overflow capacity (as well as floatables control) will replace the existing static overflow weir. The MWRA reports that a preliminary design report was due at the end of June, and that the design work remains on track for commencement of construction by August of 2014, in compliance with Schedule Seven.

III. Comments

The court cannot help but express its pleasure with the progress on all projects in the past quarter and especially the completion (ahead of schedule) by the Town of Brookline of its multi-year sewer separation project. Reciting the technical details of Schedule Seven, as I feel constrained to do in these Orders, is less satisfying than the opportunity to visit and personally observe the work in progress, as I was able to do, for example, in early May at the newly completed Cambridge Detention Basin. A parcel of what was considered wasteland has been transformed into an environmental miracle as well as what (I am confident) will come to be regarded as one of the Boston area's most beautiful urban parks. I have also closely read the highly informative FY 2014 Comments and Recommendations on the MWRA's Capital Improvement Program and Current Expense Budget issued by the MWRA Advisory Board in early June of 2013. I share the Board's appreciation of the progress that has been made by the MWRA in cleaning up the "dirtiest harbor in America" and providing consumers with arguably the

best public drinking water in the United States. I take seriously the Board's concern about the challenges posed by debt service costs and the likely impact on future rate increases, particularly if alternative sources of revenue, whether in the form of restored rate assistance relief from the Legislature, debt restructuring, or system expansion, or some combination of the three, do not materialize. I fully agree with the Board that the MWRA has responsibly managed its own budget (with the Board's oversight) in the interim, but that the potential for further internal cost-savings is at its diminishing point.

ORDER

The parties are ordered to report to the court as previously scheduled.

SO ORDERED.

/s/ Richard G. Stearns

UNITED STATES DISTRICT JUDGE